Delhi High Court orders 6-month forensic audit in Daiichi-Fortis case

Court seeks reconstruction of Singh brothers' share and asset trail

The court noted that almost a decade had passed since execution proceedings began, while assets originally available to satisfy the award had progressively diminished (Photo: Twitter)

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The Delhi High Court (HC) has ordered a six-month forensic audit into the alleged dissipation of assets of former Fortis promoters Malvinder Mohan Singh and Shivinder Mohan Singh during enforcement proceedings initiated by Japanese drug major Daiichi Sankyo.

Justice Subramonium Prasad appointed S Ramanand Aiyar & Co, chartered accountants, to reconstruct the movement of Fortis Healthcare (FHL) shares, funds, and related transactions from May 24, 2016, when assurances were first given to the court that Daiichi's interests would be protected. The court said the purpose was to reconstruct the chain of events and identify the persons and companies involved in the alleged dissipation of shares.

The order comes in enforcement proceedings arising from a 2016 arbitral award of ₹2,562 crore in favour of Daiichi, with interest. Daiichi has claimed that the amount outstanding has since risen to around ₹5,300 crore. The award was passed in Singapore on April 29, 2016, and carried pre-award interest of 4.44 per cent and post-award interest of 5.33 per cent. The award has survived challenges before the Delhi HC and Supreme Court (SC).

The court observed that almost a decade had passed since execution proceedings began, while assets originally available to satisfy the award had progressively diminished.

The forensic audit follows a September 2022 SC judgment which asked the Delhi HC, where the execution proceedings were pending, to consider appointing auditors to examine transactions involving banks and financial institutions, as well as transactions between FHL and RHT Health Trust.

From 71.7% to less than 1%: The Fortis stake trail

A key focus of the audit will be the dramatic reduction in the Singh family's shareholding in FHL through Fortis Healthcare Holdings (FHHPL).

FHHPL held about 71.7 per cent in FHL when the award was passed. By September 2016, its holding had fallen to around 52 per cent, with 5.29 crore unencumbered shares. The unencumbered holding subsequently fell sharply, with the court noting that FHHPL eventually held less than 1 per cent of FHL.

Daiichi has contended that 3.25 crore unencumbered FHL shares, corresponding to nearly all of the 32.6 million shares identified by the SC as missing, were disposed of after assurances had been given to the court.

The Singh brothers have maintained that several transactions followed the invocation of pledges by lenders or contractual top-up requirements as the value of pledged shares fell. Banks and financial institutions have similarly argued that they dealt with shares that were already encumbered under loan and pledge arrangements.

The court has now ordered these competing explanations to be tested through a detailed examination of records.

The audit will extend beyond the Singh brothers to banks and financial institutions involved in transactions affecting assets represented as available for satisfying the award. FHL, its directors and officers, company secretary, compliance officer, registrar and transfer agent, depositories, and other intermediaries will also come under scrutiny.

IHH deal, ₹4K crore consideration under scanner

The court has specifically brought the IHH Healthcare Berhad-Northern TK Venture (NTK) transaction within the scope of the forensic audit.

In November 2018, NTK acquired a 31.1 per cent stake in Fortis Healthcare through a subscription to fresh shares, with the transaction involving consideration of about ₹4,000 crore.

The auditor will examine the structure and implementation of the IHH-NTK transaction, including approvals, regulatory filings, the movement of shares, and the flow and utilisation of the consideration. It will also examine the subsequent transaction involving RHT Health Trust, Singapore, under which FHL paid about ₹4,666 crore to acquire proprietary interests in assets held by RHT.

The court has directed the auditor to examine the connection between these transactions and trace the movement of funds, including the purpose and beneficiaries of subsequent transactions.

Daiichi has alleged that the ₹4,666 crore transferred to RHT was not available for satisfying the arbitral award and has sought scrutiny of the transactions between FHL, IHH, and RHT.

The audit will also examine transactions involving entities associated with the Singh group, including Religare Capital Markets, Religare Capital Markets International (Mauritius), Religare Enterprises, Religare Finvest, and Religare Comtrade, as part of the broader exercise to trace the alleged dissipation of assets.

Lawyers said the order is significant because it moves the dispute from allegations in pleadings to a court-supervised reconstruction of the money and share trail. "An Indian High Court forensic audit order cannot compel books, records, or evidence from a Singapore-listed trust or a Mauritius entity without parallel proceedings or formal judicial assistance. Offshore asset preservation must be executed simultaneously across key jurisdictions at the time of the award, rather than sequentially after domestic execution stalls.," said Prachi Shrivastava, founder, Lawfinity Solutions.

Corporate veil: When can it be pierced?

The HC said reverse corporate veil piercing could become relevant if evidence shows that corporate entities were used to dissipate assets or obscure their movement. However, it stressed that such an exercise would require cogent, fact-specific material establishing misuse of the corporate structure.

Anu Sura, associate partner, PSL Advocates & Solicitors, said the court was effectively examining how the Singh brothers' controlling stake in Fortis disappeared despite their assurances to the courts. The audit would also examine the role of banks because some shares had been pledged, she said.

The court also rejected Fortis's contention based on the change in its management, observing that while the management had changed, the company remained the same and that a change in management did not affect its rights and liabilities.

IHH completed its long-delayed mandatory open offer for Fortis in November 2025. Its indirect holding in Fortis remained at 31.17 per cent following completion of the offer.

Vipul Wadhwa, partner at Singhania and Co., said any finding that funds from the IHH transaction were routed to RHT or elsewhere could expose the transaction to further legal and reputational scrutiny, potentially making follow-on steps more difficult.

The auditor will examine pledges, share transfers and sales, sale proceeds, downstream loans, bank and demat records, board minutes, shareholder resolutions, statutory registers, emails, legal opinions, and regulatory filings, besides identifying those who proposed, approved or facilitated the transactions.

The first requisition list is to be issued within four weeks, and records are to be furnished within two weeks of requisition. Non-compliance could invite contempt proceedings.

The audit is to be completed within six months, with Daiichi bearing the initial cost. The matter has been listed for April 1, 2027.

The case also highlights the practical difficulty of enforcing large foreign awards when assets move across jurisdictions.

“The 2016 SIAC award ceased being a standard execution proceeding years ago. While India's framework for enforcing foreign awards is comparatively creditor-friendly, realisation stalls when execution expands into fresh, multi-party litigation against non-signatories over asset dissipation and corporate veil-piercing. Foreign award holders consistently underprice the multi-year gap between legal recognition and actual recovery," Shrivastava said.

Taking note of the order, Fortis Healthcare told Business Standard that the judgment does not impose any monetary liability on Fortis, which was neither a party to the original dispute nor a judgment debtor in the execution proceedings.

“The court has directed the appointment of a forensic auditor to primarily conduct a factual enquiry and reconstruction of the facts in relation to the dissipation of shares of Fortis by the erstwhile promoters (Singh brothers), which does not in any way, by itself, result in fastening of liability on Fortis," the company added.

Fortis said that it is reviewing the judgment in detail in consultation with its legal counsel and will evaluate the appropriate course of action in accordance with applicable law.

"The company remains committed to the highest standards of corporate governance, transparency, and regulatory compliance and continues to remain focused on its operations and the interests of all its stakeholders," it said.

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